

REMARKS

Reconsideration and withdrawal of the rejections of the application are requested in view of the amendments and remarks presented herein, which place the application into condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 12-14, 18-24, 29, 31, 32, 34, 38 and 40 are pending in this application. Claims 12-14, 18, 24, 31, 34 and 40 are amended. Support for the amended claims can be found throughout the specification and from the previously pending claims. No new matter is added.

It is submitted that the claims are patentably distinct over the prior art and that these claim are and were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but simply for clarification and to round out the scope of protection to which Applicants are entitled.

It appears from the Examiner's search strategy (copy enclosed) and cited references that the Examiner has conducted a search and examination beyond the scope of the elected species of env protein, *i.e.*, VSV-G. This is very much appreciated and underscores the difficulty of performing a restricted search of an aspect of the invention, in this case pseudotyping, which, while it is a component of the invention, is not the invention *per se*.

Therefore, it seems unnecessary that Applicants should have to go through the exercise of a separate examination on the basis of each species of env protein. The conducted search and cited art clearly indicate that a search of the full scope of the invention - transduction of adipose tissue cells with viral vectors - is sufficient to find all of the relevant art that would generally apply to the subject matter of viral vectors, particularly since retroviral and lentiviral vectors are more often than not pseudotyped with an env protein.

The technology of pseudotyping retroviral vectors was generally known in the art at the time of the claimed invention. However, it was not known that pseudotyped lentiviral vectors, in particular, could be capable of transducing adipose tissue cells. Applicants were the first to teach transduction of adipose cells with lentiviral vectors. Accordingly, Applicants request withdrawal of the requirement of the species election.

The Examiner is thanked for his helpful remarks in the Office Action.

II. THE REJECTION UNDER 35 U.S.C. § 101 IS OVERCOME

Claims 13 and 15 were rejected under Section 101 as allegedly being directed to non-statutory subject matter. Claim 15 is cancelled and claim 13 is amended, obviating the rejection. Reconsideration and withdrawal are requested.

III. THE REJECTION UNDER 35 U.S.C. § 112, 1ST PARAGRAPH, IS OVERCOME

Claims 12-24 and 26-30 were rejected under the first paragraph of Section 112 as allegedly lacking enablement. In an effort to advance prosecution, the claims have been amended to address the issues raised in the Office Action. This should not be interpreted as acquiescence to or agreement with the rejection, and Applicants reserve the right to pursue the subject matter as previously claimed in continuing applications. Reconsideration and withdrawal of the enablement rejection are requested.

IV. THE ART REJECTIONS ARE OVERCOME

Claims 13, 15, 18, 19, 22 and 23 were rejected under Section 102(b) as allegedly being anticipated by Levine *et al.* Claims 13 and 15 were rejected under Section 102(b) as allegedly being anticipated by Bruggerman *et al.* In view of the fact that neither reference teaches the use of a lentiviral vector to transduce adipose cells, reconsideration and withdrawal of these rejections are requested.

Claims 12-16, 18, 19, 21-24, 30, 32, 33, 38 and 39 were rejected under Section 102(e) as allegedly being anticipated by Dropulic. Claims 12, 13, 15-17, 24, 30, 31, 33, 34, 39 and 40 were rejected under Section 103(a) as allegedly being unpatentable over Dropulic in view of Mitrophanous *et al.* In particular, the Examiner relied on paragraphs 51 and 59 of Dropulic to support the rejections. However, while Dropulic claims priority to January 25, 2001, the priority document (U.S.S.N. 60/264,272; copy enclosed) does not include any explicit, or even implicit, teaching, suggestion, or mention of the use of pseudotyped lentiviral vectors in adipose tissue target cells.

In fact, the earliest mention by Dropulic of lentiviral vectors and adipose tissue target cells is in International application no. PCT/US02/02287, with a filing date of January 25, 2002. This is obviously later than the priority date of the instant application, April 20, 2001. Therefore, Dropulic cannot be used in a rejection under Sections 102 or 103. Accordingly, reconsideration and withdrawal of the rejections based on Dropulic are requested.

CONCLUSION

Applicants believe that the application is in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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